

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

RSA No.406 of 2006

Decided on: September 21, 2006

Babu Ram and others

.....Appellants.

VERSUS

Smt. Manso and others

.....Respondents.

Coram

The Hon'ble Mr. Justice Surjit Singh, Judge.

Whether approved for reporting?

For the Appellants : Mr. K.D. Sood, Advocate.

For the respondents : Nemo.

Surjit Singh, Judge (Oral)

Heard and gone through the record.

2. Respondent Manso, hereinafter called plaintiff, filed a suit for declaration that she was joint owner in possession to the extent of half share in the suit property and that the mutation attested in the year 1982 in favour of the appellants-defendants in respect of her half share in the suit property was illegal and void, as the said mutation had been sanctioned behind her back and on the basis of misrepresentation of the appellants-defendants.

3. Relevant facts are that appellants-defendants and the husband of respondent Manso, named Dalipo, were joint owners in possession of the suit property. Dalipo died some 35 years prior to the institution of the suit. On his demise, his half share in the suit property was mutated in the name of Manso, being his widow. Soon after the attestation of mutation of Dalipo's estate in her favour,

Whether the reporters of the local papers may be allowed to see the judgment?

Manso re-married some other man and started living with him. She claimed that she had been visiting the suit property off and on and had been in joint possession with the appellants-defendants. In the year 1982, appellants-defendants made a report to the Patwari that respondent-plaintiff Manso had died and that they had inherited her estate. On the basis of that report, mutation was entered and ultimately attested in favour of the appellants-defendants. Respondent-plaintiff challenged the said mutation, alleging the same to be illegal and contrary to the factual position, and also prayed for declaration that she was joint owner to the extent of half share. She also prayed for issuance of permanent prohibitory injunction restraining the appellants-defendants from alienating her half share in the suit property.

4. Appellants-defendants contested the suit. They denied that Manso, respondent-plaintiff, was the wife of Dalipo. In the alternative, they took the plea that they had acquired title to respondent-plaintiff's share in the joint property by way of adverse possession, because they had been in exclusive possession of the entire suit property after the death of Dalipo and their possession was open, continuous and hostile.

5. Trial Court, after framing the issues and recording the evidence of the parties, came to the conclusion that respondent-plaintiff was joint owner to the extent of half share and that mutation attested in favour of the appellants-defendants with respect to her half share in the year 1982 was illegal and void, as the respondent-plaintiff was alive and the report lodged with the Patwari, on the basis

of which mutation was entered and attested, was factually incorrect and rather false. The trial Court also dismissed the plea of adverse possession raised by the appellants-defendants. Consequently, suit was decreed. Appeal filed by the appellants-defendants in the Court of District Judge stands dismissed.

6. The only submission that has been made by the learned counsel for the appellants-defendants is that respondent-plaintiff Manso having left the village in which the property is situated, soon after the death of her husband and having settled with some other man as his wife and having never participated in the cultivation of the land or the enjoyment of its usufruct, her title stood extinguished and vested in the appellants-defendants, on account of the latter being in exclusive possession for more than 12 years. The contention is without merit. Admittedly, the appellants-defendants and the plaintiff-respondent are joint owners, after the death of plaintiff's husband Dalipo. It is well settled that the possession of a co-owner is the possession of all and if the co-owner in physical possession intends to acquire title with respect to the share(s) of the other co-owner(s), who is/are not in physical possession, he or she has to take the plea of ouster, which means he or she has to specifically plead that at some given point of time he or she had declared to the knowledge of the co-owner(s), not in physical possession, that he/she (the co-owner in possession) held the property adversely to the co-owner(s) out of possession. It is from the date of such ouster that adverse possession commences. Such a plea was not raised by the appellants-defendants. Therefore, no fault can be found with the

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finding of the two Courts below that the appellants-defendants have not acquired title to the share of the respondent-plaintiff in the suit property, by way of adverse possession.

7. No other point has been urged.

8. Since no substantial question of law is involved, the appeal is dismissed.

CMP No.767/2006

Infructuous.

September 21, 2006_(sd)

(Surjit Singh), J.